

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
VALDOSTA DIVISION

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| ABNER CLARK MACKEY,                  | : |                         |
|                                      | : |                         |
| Plaintiff                            | : |                         |
|                                      | : |                         |
| VS.                                  | : |                         |
|                                      | : |                         |
| Warden ALEXIS CHASE, <i>et al.</i> , | : | NO. 7:06-cv-12(HL)      |
|                                      | : |                         |
| Defendants                           | : | <b><u>O R D E R</u></b> |

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Plaintiff **ABNER CLARK MACKEY**, an inmate at Men's State Prison in Hardwick, Georgia, originally filed a *pro se* document entitled "Leave to Amend - In Order to Add Defendants and to more Accurately Comply with F.R.C.P. 8," in civil action number 7:98-cv-93(CAR), a case which this Court dismissed in 2001. On January 25, 2006, Judge Ashley Royal denied plaintiff's motion to amend because it was untimely and asserted claims not in the original complaint. Judge Royal further directed that the Clerk of Court "refile Plaintiff's motion under a new civil action number." Accordingly, the Clerk of Court refiled plaintiff's motion on January 27, 2006, as civil action number 7:06-cv-12(HL).

As plaintiff's filing has been *sua sponte* converted into a new action, plaintiff has not paid the filing fee. 28 U.S.C. § 1915. Because plaintiff is a frequent filer and has more than three previous lawsuits dismissed as frivolous under 28 U.S.C. § 1915(g),<sup>1</sup> he cannot proceed *in forma*

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<sup>1</sup> Plaintiff's strikes include: (1) ***Mackey v. Love-Gaines***, 6:04-cv-34(WLS) (M.D. Ga. Sept. 8, 2004); (2) ***Mackey v. State of Georgia***, 5:04-cv-178(WDO) (M.D. Ga. June 29, 2004); (3) ***Mackey v. Garner***, 7:98-cv-112(HL) (M.D. Ga. Aug. 30, 1999); (4) ***Mackey v. Puckett***, 1:99-cv-687-RWS (N.D.

*pauperis* in this proceeding unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Although plaintiff sues prison officials, lawyers, judges, and others, alleging a conspiracy to bring injury or death to plaintiff, plaintiff’s complaint does not present specific facts indicating that plaintiff is in “imminent danger of serious physical injury.” Accordingly, plaintiff must prepay the \$250.00 filing fee before this case can proceed. The plaintiff is hereby afforded **TWENTY (20) DAYS** from the filing date of this order in which to pay the full filing fee or face dismissal of this action.

Also before the Court is plaintiff’s motion demanding that District Judge C. Ashley Royal, Magistrate Judge Richard L. Hodge, deputy clerk Sandra DeCesare, and the undersigned judge recuse themselves from further involvement in any of plaintiff’s lawsuits filed in this court (Tab # 3). In support of his motion, plaintiff alleges that “the acts of these players are based on racial discrimination and a continued effort at criminal fraud - as well as an effort to deny plaintiff equal protection under the law.” Plaintiff has alleged no valid facts in support of these allegations. Plaintiff’s conclusory allegations are insufficient and, therefore, plaintiff’s motion is **DENIED**. To the extent that plaintiff seeks issuance of warrants and/or to have any criminal charges filed, a prisoner has no constitutional right to have someone criminally prosecuted. *Oliver v. Collins*, 914 F.2d 56, 60 (5th Cir.1990).

Lastly, this case was originally referred to Magistrate Judge Hodge. Because Magistrate Judge Hodge is a named defendant in this action, the Court finds it appropriate to withdraw that

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Ga. July 12, 1999); and (5) *Mackey v. Beasley*, 1:98-cv-3457-RWS (N.D. Ga. Dec. 22, 1998). In addition, plaintiff’s appeal in *Mackey v. Puckett*, Case Number No. 99-12538-F, was dismissed as frivolous by the Eleventh Circuit on or about February 8, 2000.

referral order. Accordingly, the January 27, 2006, referral of this matter to Magistrate Judge Hodge is hereby **WITHDRAWN** and the case shall now be referred to Magistrate Judge Claude W. Hicks, Jr.

**SO ORDERED**, this 7<sup>th</sup> day of February, 2006.

s/ Hugh Lawson  
HUGH LAWSON  
UNITED STATES DISTRICT COURT

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